IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C.W.P. No. 15336 of 2004

Date of Decision: August 30, 2006

Naresh Kumar

…..Petitioner

Vs.

Secretary to Government of Haryana and another

…..Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR.

HON'BLE MR. JUSTICE M.M.S. BEDI.

Present:- Mr. O.P. Sharda, Advocate
for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana,
for the respondents.

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**M.M. KUMAR, J.** (ORAL)

This petition filed under Article 226 of the Constitution prays for quashing orders dated March 25, 2004 (P-7) and July 20, 2004 (P-11), passed by the Director, Secondary Education, Haryana- respondent No.2. The order dated March 25, 2004 (P-7) has cancelled the appointment letter/ sanction letter dated January 2,2003 (P-6) under the heading 'Appointment of Sh. Naresh Kumar, Clerk on account of the death of Sh. Chander Bhan, Hindi Teacher, Government Middle School, Sandil (Jind)'. A copy of the

letter was sent to the mother of the petitioner, namely Smt. Sheela Devi, wife of the deceased employee Sh.Chander Bhan. The order dated July 20, 2004 (P-11) has again been passed by the Director- respondent No.2 to justify the cancellation by placing reliance on Haryana Compassionate Assistance to the Dependent of Deceased Government Employees Rules, 2003, (for brevity '2003 Rules').

Brief facts of the case necessary for disposal of the instant petition are that the father of the petitioner- Chander Bhan was working as Hindi Teacher in the respondent Department. On October 9, 2001, he died while in harness. On November 15, 2001, the mother of the petitioner sent an application to the respondents with all required documents for his appointment as Clerk in the Education Department under the Ex-gratia appointment policy dated May 8, 1995 (P-4). All the necessary details of the petitioner that he was born on May 11, 1970 and held adequate qualification were disclosed. The petitioner is matric from the Board of School Education Haryana in Ist Division (March, 1986), and he has acquired one year Hindi Stenography Course from I.T.I., Kaithal (July, 1992) alongwith the qualification of Prabhakar from Panjab University in second division (May, 1996). True copies of the aforementioned certificates have been attached as annexures P-1 to P-3. The Director, Secondary Education, Haryana, accorded sanction to the appointment of the petitioner on the post of Clerk vide order dated January 2, 2003 and placed reliance on the Ex-gratia compassionate appointment policy dated May 8, 1995. The aforementioned order reads as under:-

"In accordance with the powers vested, vide in Govt. letter No. 16/5/95- GS-II dated 8.5.1995, sanctioned his hereby accorded to the appointment of Naresh Kumar, son of Late Sh. Chander Bhan, Hindi Teacher, as Clerk, in the subordinate offices of the Education Department, Haryana, without reference to the Staff Selection Commission/ Director Employment, Haryana. The information regarding the post on which he has been appointed should be sent to the Employment Department, Haryana. In column 10 the following should be written:-

"In terms of Haryana Government letter No. 3442 & GS-1171/19269 dated 13.7.71 the vacancy is to be filled up by a member of the family of a Govt. employee who had died while in service, as such to be submitted for the vacancy."

The applicant belongs to general category. The copies of this certificates of Educational qualifications are enclosed. Please check the certificates regarding the educational qualifications at the time of joining."

It is appropriate to mention that a perusal of endorsement at Sr. No.2 would show that a copy of the order was sent to the mother of the petitioner. It is further appropriate to mention that on January 15, 2003, nine other persons similar situated to the petitioner were given appointment as officiating Clerk as is evident from a perusal of order annexure P-9. It has been pointed out that Dharamvir son of Late Sh. Ram Pal at Sr. No.8

was also more than 25 years of age on the date of his appointment. However, respondent No.2 has passed an order dated March 25, 2004 (P-7) withdrawing the sanction accorded to the appointment in favour of the petitioner under the Ex-gratia scheme dated May 8, 1995. A supplementary order has also been passed later on July 20, 2004 (P-11). In both the orders, reliance has been placed on 2003 Rules which came into force from March 4,2003. It has been observed that according to the Rules, the petitioner had attained the age of 25 years and was not eligible to be given appointment. The petitioner was only asked to exercise option for financial assistance of Rs.2.5 lacs. Feeling aggrieved, he has approach this Court.

When the matter came up for consideration, a Division Bench has issued notice of motion on September 30,2004. Thereafter, numerous adjournments were obtained for filing reply. One last opportunity was granted on May 25, 2006, with a stipulation that the written statement may be filed on or before July 10, 2006 with a copy in advance to the counsel for the petitioner and the matter was fixed for hearing on July 17, 2006. It was further clarified that if no written statement was filed by the specified date then the case was to be taken up for arguments without granting any further opportunity for filing written statement. We had still taken a lenient view and on July 17,2006, another adjournment was granted to the counsel for the respondents and the matter was fixed for today. Even today, no written statement has been filed and we have proceeded to hear the arguments without any written statement as per the orders already passed.

Mr. O.P. Sharda, learned counsel for the petitioner has argued that the case of the petitioner cannot be considered to be pending on March

4, 2003, when the 2003 Rules came into force, as sanction letter has already been issued on January 2, 2003 and only ministerial work to enable the petitioner to join service as Clerk by checking his certificates etc. was required to be gone into. Learned counsel has further argued that 2003 Rules would not be applicable to the case of the petitioner for the simple reason that the petitioner has already been given appointment as Clerk. He has further pointed out that no opportunity of hearing was given before cancelling the appointment order dated January 20, 2003 and the impugned order dated March 25,2004 and July 20, 2004 (P-7 and P-11) have been passed without any notice to the petitioner or his mother. Learned counsel has maintained that once a right has come to be vested in the petitioner, the same cannot be taken away without grant of opportunity to the petitioner. He has still further submitted that the ground of over-age referred by the respondents is preposterous and arbitrary as the order of appointment issued in favour of one Dharamvir S/o Late Sh Ram Pal vide order dated January 15, 2003 (P-9) would also show that Dharamvir was also over-age. Therefore, the case of the petitioner cannot be hand picked for hostile discrimination which would violate provisions of Articles 14 and 16 (1) of the constitution.

Mr. Harish Rathee, learned State counsel has argued that it is incorrect for the petitioner to say that the letter dated 02.01.2003 (P-6) could be considered as an appontment letter. On that basis it is sought to be contended that the case of the petitioner would be deemed to be pending within the meaning of 2003 Rules. Therefore, the case of the petitioner would be deemed to be pending as no letter of appointment was issued to

the petitioner till 28.2.2003, when the 2003 Rules came into force. Learned counsel has argued that an appointment letter is the one on the basis of which a person is entitled to join the post for which it is issued and according of sanction, cannot be considered issuance of an appointment letter. However, on the query made by the Bench, learned counsel was not able to answer as to whether the petitioner was given any opportunity of hearing before cancelling the letter dated 02.01.2003 (P-6) by passing the orders of cancellation dated 25.3.2004 (P-7) and 20.7.2004 (P-11).

After hearing learned counsel for the parties, we are of the considered view that this petition deserves to be allowed and the case of the petitioner could not be considered as pending on 28.2.2003/4.3.2003 when the 2003 Rules were enforced. A perusal of order dated 2.1.2003 (P-6 supra) makes its evident that the case of the petitioner was duly considered and sanction was accorded to his appointment as clerk in the subordinate offices of the Education Department. The post of clerk to which appointment of the petitioner was made, has to be taken out of the purview of the Staff Selection Commission, Haryana/Director Employment, Haryana. According to the order in column 10 a clause was to be inserted in terms of Haryana Government letter dated 13.7.1971 that the vacancy was to be filled up by the family member of a government employee who had died while in service. The only thing directed by respondent No. 2 to the addressee that the certificate regarding his educational qualifications at the time of joining would be checked. In the endorsement at serial No. 1, Superintendent has been requested that the vacancy of clerk against which the petitioner has been appointed as clerk be intimated by sending a copy of

appointment letter to the pension branch. A copy of the aforementioned letter was endorsed to the mother of the petitioner, Secretary Staff Selection Commission, Haryana, Director State Employment, Haryana and the Chief Secretary, Haryana. We fail to understand that once the order is communicated, how such an order would not be considered as finalization of the case of the petitioner. Article 166 of the Constitution postulates for a communication would assume the character of a government order when it satisfies two requirements viz., (a) the order is expressed in the name of Governor and (b) it is communicated to the person concerned. The principles laid down under Article 166 of the Constitution have been considered by the Hon'ble Supreme Court in **Bachhittar Singh vs. State of Punjab and another** AIR 1963 Supreme Court 395. Although, those principles are not strictly applicable to the fact of the present case because the order in this case has not been passed by the Government, yet the principle appear to be that if an order is communicated by a competent authority, which in this case is the Director, Secondary Education, Haryana (respondent No.2), then it cannot be concluded it was not an order or that the case of the petitioner was pending after 2.1.2003 (P-6). In any case, there is no provision in 2003 Rules which may be construed to imply that those Rules were applicable to all pending cases.

We are of the further view that the impugned orders dated 25.3.2004 (P-7) and 20.7.2004 (P-11) have flagrantly violated the basic principles of natural justice as no notice before cancelling the aforementioned order was issued to the petitioner or his mother. It is trite to observe that an order which does not comply with the principles of

natural justice is liable to be set aside on that ground alone. The respondents have failed to file written statement despite repeated adjournments given and the State counsel could not controvert whether any notice was ever issued. In other words, the averments made in the petition in that regard are deemed to be admitted.

For the reasons aforementioned, this petition succeeds. We hereby quash orders dated 25.3.2004 (P-7) and 20.7.2004 (P-11). The order dated 2.1.2003 shall be deemed to have come into operation and accordingly, the petitioner becomes entitled to be appointed on the post of clerk in the subordinate office of the Education Department, Haryana in terms of order dated 2.1.2003 (P-6).

We further direct that all the necessary steps leading to the joining of the petitioner be taken within two months from the date of receipt of a certified copy of this order. The petitioner shall have his costs which are quantified at Rs. 5,000/-

(M.M.KUMAR)
JUDGE

August 30, 2006
sanjay/gsv

(M.M.S.BEDI)
JUDGE